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**IN THE
COURT OF APPEALS OF INDIANA**

ROBERT C. HOWARD,
Appellant-Defendant,

VS.

STATE OF INDIANA,
Appellee-Plaintiff.

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No. 48A02-0701-CR-5

APPEAL FROM THE MADISON COUNTY COURT
The Honorable David W. Hopper, Judge
Cause No. 48E01-0410-FD-472

July 31, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

Robert Howard appeals his sentence for operating a vehicle while intoxicated (OWI) as a Class D felony.¹ Because the trial court did not abuse its discretion in sentencing Howard and his thirty-month sentence is appropriate in light of his character and the nature of his offense, we affirm.

FACTS AND PROCEDURAL HISTORY

Howard was charged with various offenses in October 2004. On September 18, 2006, he agreed to plead guilty to OWI in exchange for dismissal of the other counts. The trial court sentenced him as follows:

All right. Mr. Howard, on the conviction entered today for Count III, Operating a Vehicle While Intoxicated, a Class D Felony, the other two (2) counts have previously been dismissed, um, the court finds as aggravating factors your prior criminal history of at least five (5) prior O.W.I. convictions. It may well be six (6) but, uh, the P.S.I. shows five (5), uh as well as a prior felony for Resisting Law Enforcement. So this is at least a second felony, it's also you[r] sixth O.W.I. conviction. No doubt in my mind you're an alcoholic and you need treatment. You should have addressed that on your own so that you'd quit committing these felony offenses and endangering the public. Given that you have done this, uh, you're going to go to prison to drive home the point that this is a serious criminal act. Some people don't get that. I suspect you're one of those people. You say, well, but I'm . . . I'm sick, I have this illness so it's not really my fault. Well it is. So as far as mitigation you did plead guilty. The aggravation far outweighs that though. I will take it into account and rather [sic] the maximum thirty-six (36) months, I'll impose a sentence of thirty (30) months to Department of Correction. That's going to be fully executed to Department of Correction. There'll be no probation.

(Tr. at 29-30.)

¹ Ind. Code § 9-30-5-3.

DISCUSSION AND DECISION

Howard argues the trial court did not properly consider as mitigating his “acknowledgement and need for substance abuse treatment in which completion had not been a requirement in past sentencing for substance abuse offenses.” (Br. of Appellant at 9.) Howard admitted having an alcohol problem for twenty years. However, the trial court noted, Howard sought treatment for that problem only once and for only a few weeks, despite numerous charges and convictions of alcohol-related offenses.

Trial courts sometimes treat substance abuse as a mitigating circumstance; however, courts can treat it as an aggravating circumstance. *Iddings v. State*, 772 N.E.2d 1006, 1008 (Ind. Ct. App. 2002), *trans. denied* 783 N.E.2d 700 (Ind. 2002). The trial court did not abuse its discretion in rejecting Howard’s alcoholism as a mitigating factor. *See Gillem v. State*, 829 N.E.2d 598, 604 (Ind. Ct. App. 2004) (finding of mitigators within discretion of trial court; trial court not required to agree with defendant as to weight or value of proffered mitigators), *trans. denied* 841 N.E.2d 182 (Ind. 2005).

Howard asserts his sentence is inappropriate. We will not revise a sentence authorized by statute unless it is inappropriate in light of the nature of the offense and the character of the offender. Ind. Appellate Rule 7(B). We exercise great restraint in reviewing and revising sentences and recognize the special expertise of the trial bench in making sentencing decisions. *Pinkston v. State*, 836 N.E.2d 453, 458 (Ind. Ct. App. 2005), *trans. denied*.

As to his offense, Howard was intoxicated when he drove his vehicle and he had a passenger with him. The probable cause affidavit indicates Howard was speeding and

turned at an intersection at a high rate of speed. He dropped off one side of the road, recovered, crossed the centerline, went off the other side of the road, and recovered. He did not stop when the police car behind him turned on its lights; instead he sped up. Howard turned into his driveway, slid on the gravel, and continued through the yard. He stopped in an open field, where he and his passenger attempted to flee from police.

Howard's criminal history includes misdemeanor convictions of OWI in 1988, 1989 and 1999, possession of marijuana in 1988, battery in 1990, failure to prove financial responsibility in 1992, pointing an unloaded firearm at another person in 2001, and battery against a person causing bodily injury in 2001; felony convictions of OWI in 1992 and 2003, and resisting law enforcement in 1989; and a finding he was an habitual substance offender in 1999. Howard received probation, suspended sentences, home detention, and one 30-day jail sentence for these offenses. As the presentence investigation report notes: "It would appear the defendant has not benefited much from prior efforts at community corrections, or probation following conviction for substance abuse related offenses." (App. at 68.)

Howard admitted having long-standing problems with alcohol and failing to seek help for his problems despite repeated convictions of alcohol-related offenses. The presentence investigation report notes Howard is "likely minimizing his use and misuse of substances" and has a "tendency to justify driving a vehicle after drinking." (*Id.*) His failure to seek help and to abide by the laws of this state does not speak well of his character.

In light of Howard's character and the nature of his offense, we conclude his sentence was appropriate. The trial court did not abuse its discretion in finding or weighing aggravators and mitigators. Accordingly, we affirm.

Affirmed.

BAILEY, J., and SHARPNACK, J., concur.